IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6141 of 1997
With
SPECIAL CIVIL APPLICATION No. 6610 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BINABEN PRAHLADBHAI PATEL - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR DHIRENDRA MEHTA for Petitioner(s) : 1,
MR MAULIK NANAVATI, ASST. GOVERNMENT PLEADER for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 20/12/2006

COMMON ORAL JUDGMENT

1. By way of both these petitions under Article 226 of the Constitution of India, the respective

petitions who were claiming appointment as a Primary Teacher have prayed for an appropriate order declaring that the age eligibility of completion of 18 years of age as on 1.7.1992 as required as per the column No.4 of the printed format of application and conditions /instructions Nos.6 and 14 mentioned in the sheet of instructions and attached thereto (Annexure-B) are illegal, being inconsistent with the statutory rules.

2. It appears that at the time of hearing of the present Special Civil Applications, the petitioners contended that the decision in Special Civil Application No.7927 of 1992 raising identical question was subject to further appeal before the Division Bench being Letters Patent Appeal No.289 of 1993 and as the said L.P.As., were pending and initially even the interim orders were granted directing to consider the case of those original petitioners on merits, this Court admitted the present Special Civil Applications and granted the interim order directing the respondents to consider the petitioners' applications for appointment as a Primary Teacher pursuant to the advertisement dated 13.10.1992 and further directed that if the petitioners are found to have attained the standard of selection set out by the respondent No.2, the petitioners shall be called for interview and may also be offered

appointment if they are selected according to their merits. However, it was also further observed by this Court that if such appointment is made, the same shall be subject to the result of this petitions. This Court also further observed that in the event, the petitioners loses in these petitions, they shall not be entitled to claim equity on account of such appointment. It appears that these Special Civil Applications were ordered to be heard along with Special Civil Application No.1843 of 1997. It is reported by Shri Maulik Nanavati, learned AGP that the aforesaid Special Civil Application No.1843 of 1997 was ordered to be heard along with Letters Patent Appeal No.302 of 1993 and the said Letters Patent Appeal has already been dismissed by the Division Bench of this Court. He has also relied upon the judgment of the Division Bench of this Court dated 10.3.1998 passed in Letters Patent Appeal No.289 of 1993 and other cognate matters by which, the Division Bench of this Court upheld the above conditions. On going through the judgment and order passed by the Division Bench of this Court in the aforesaid L.P.A. No.289 of 1993 and other cognate matters, it appears that the dispute which has been raised in the present Special Civil Applications are squarely covered by the said decision.

3. Under the circumstances and for the reasons

stated in the decision of the Division Bench of this Court dated 10.3.1998 passed in aforesaid L.P.A. No. 289 of 1998 upholding the above conditions, the present Special Civil Applications are required to be dismissed.

4. For the reasons stated above, both the petitions fail. Rule is discharged. Ad-interim relief, if any, stands vacated forthwith. If any appointments are made pursuant to the impugned direction issued by this Court dated 25.9.1997 and considering the observations made by this Court that the said appointment will be subject to the result of the present Special Civil Applications and that the petitioners shall not be entitled to claim equity on account of such appointments, on dismissal of present Special Civil Applications and vacating the interim order, if the petitioners are appointed pursuant to the interim order dated 25.9.1997 they will not be entitled to continue in service as a Primary Teacher on the basis of the aforesaid order. No costs.

(M.R.SHAH, J.)

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